from and after twenty-four hours from the day and hour the application for such insurance has been taken by the authorized local agent of said company," etc. Plaintiff signed and placed in the hands of a local agent of defendant an application for insurance against hail and certain other risks, the application providing that the insurance should take effect from the day of its receipt and acceptance, "as evidenced by the issuance of a policy thereon," at an agency of the company some distance from the location of the local agent. While plaintiff's application was in transit to the designated agency there was a loss by hail, and defendant, apparently without knowledge of such loss, rejected the application. In an action to recover the insurance, *held,* the statute is valid and defendant liable. *Wanberg* v. *National Union Fire Ins. Co.* (N. Dak., 1920), 179 N. W. 666.

Since an offer creates in the offeree a power by acceptance to enter into a contractual relation with the offeror, it would seem logically sound that if the offeror chooses so to mould the power that acceptance may be manifested by silence or inaction, such silence or inaction should be sufficient to amount to acceptance. Of course, silence and inaction are equivocal, but under the circumstances stated it should be deemed logically *possible* to have acceptance evidenced thereby, and there are many such cases in the field of unilateral contracts where the act on the part of the offeree was inaction. See WILLISTON ON CONTRACTS, § 135. Where the offer contemplates a bilateral contract, a counter promise by the offeree, or an unilateral contract in which the promise is on the side of the offeree, as a practical matter it is easy to see how a court might look upon the situation somewhat differently. While a court might not be unwilling to conclude that silence or inaction may amount to acceptance whereby the acceptor merely acquires rights, unquestionably as a practical matter more hesitancy would be shown if such acceptance were also to impose liabilities. There may be situations in which there is clearly a duty on the part of the offeree to act, so that a failure to act may sufficiently show acceptance. *Wheeler* v. *Klaholt,* 178 Mass. 141; *Garst* v. *Harris,* 177 Mass. 72; *Austin* v. *Burge,* 156 Mo. App. 286; *Turner* v. *Machine & F. Co.,* 97 Mich. 166. So in the case of silence, there may have been under the circumstances a duty to speak so that a failure to do so will amount to an acceptance. In the principal case the statute seems to have created such duty. Whether the time allowed therein was not so short as to make the statute invalid may be seriously questioned. *Prescott* v. *Jones,* 69 N. H. 305; *Royal Insurance Co.* v. *Beatty* 119 Pa. St. 6; *Hobbs* v. *Whip Co.,* 158 Mass. 194; *Grice* v. *Noble,* 59 Mich. 515, are instances of mere silence not amounting to acceptance.

CORPORATIONS—LIABILITY OF STOCKHOLDERS UNDER A STATUTE MAKING THEM LIABLE FOR "DEBTS" DOES NOT INCLUDE LIABILITY FOR TORTS.—In a suit on a judgment against a corporation for the wrongful taking of ore from plaintiff's property brought against a shareholder of the corporation under a statute providing that each stockholder shall be personally and individually liable for the "debts" of a corporation to the extent of his unpaid

stock, it was *held* that "debts" does not include the liability of a corporation for a tort, and that even when the claim is reduced to judgment the shareholder may go behind it and show that the claim is not recoverable under the statute. *Clinton Mining & Mineral Co.* v. *Beacom* (July 3, 1920), 266 Fed. 621.

The reasoning of the decision is put upon the basis that since this statute is an increase of the common law liability of the stockholder, and since a number of terms of clearly defined legal meanings are used in the statute, the intent of the makers was that a strict construction should be applied, and the technical meaning of debt as a "sum certain" or "liability arising out of contract" should be adopted. Since the injury for which judgment had been given against the corporation was for a tort, this was not an obligation that the corporation could legally incur, and, it is argued, the statute-makers could not have intended to hold shareholders for debts they could not have conceived the corporation incurring at the time they entered a contract relation in becoming subscribers for stock. While it is true that no presumption may be raised that the stockholder contracted with reference to the commission of any *ultra vires* acts on the part of the corporation, it is certainly true that the intent of the statute is to be remedial and to prevent shareholders from escaping by means of the corporate fiction from just such illegal or tortious acts. As to the party injured, the shareholders, to the amount of their unpaid stock, certainly appear in the light of responsible parties. That the above technical construction of such statutes increasing the common law liability of stockholders has not always been followed appears in the view of Judge Story in the early case of *Carver* v. *Braintree*, 2 Story (U. S. C. C.) 432, in which he holds that "debts contracted" may be construed as "liabilities incurred" and should include all cases of claims, whether liquidated or unliquidated, arising either *ex delictu* or *ex contractu*. This broad stand has since been disapproved in numerous cases. *Doolittle* v. *Marsh*, 11 Neb. 243, 9 N. W. 54; *Heacock* v. *Sherman*, 14 Wend. 58; *Cable* v. *McCune*, 72 Am. Dec. 214. For other cases of this type, see 22 L. R. A. (N. S.) 256. But in *Cohen* v. *Jay Gun Mfg. Co.*, 185 Mo. App. 330, the court holds, in construing a statute almost identical with that in the principal case, that a judgment, whether founded on tort or contract liability, is a "debt," and a recovery may be had therefor under such a statute. The expression, "debts unpaid," has been considered sufficient to include the obligation of a corporation to pay for coal illegally mined and to hold the stockholders of the offending corporation for its value. *Abernathy* v. *Loftus*, 87 Kan. 95. "Dues" has usually been held to include liability for tort judgments, in cases of remedial statutes. *Henley* v. *Meyers*, 76 Kan. 723. While the more elastic phrase, "debts and liabilities," is generally construed to meant tort liabilities as well as those of contract.

DAMAGES—MEASURE OF, WHEN INJURY IS CAUSED BY A "PERMANENT STRUCTURE."—The defendant so built its railway as to flood 56 acres of the plaintiff's 138-acre farm. There was a suit and recovery for this. The cause of action as alleged was based on the building of the grade and the erection